



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2021

CORAM:

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**W.P(MD)NO.19923 OF 2021
and
W.M.P(MD)No.16618 of 2021**

P.Elavarasan

:Petitioner

.vs.

1.The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

2.The Presiding Officer,
Debts Recovery Tribunal,
Coimbatore.

3.The Authorized Officer,
Canara Bank,
Karur SME Branch,
37, Ist Cross,
Vaiyapuri Nagar,
Karur - 639 001.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the first respondent, dated 15.09.2021 in I.A.No.36 of 2020 in AIR (SA)No.396 of 2019 and to quash the same and consequently to direct the first respondent to take the appeal in AIR(SA)No.396 of 2019 on file and decide the same on merits and in accordance withlaw, within a time frame fixed by this Hon'ble Court.

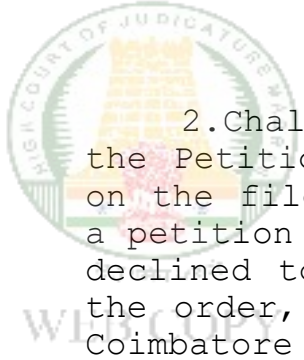
For Petitioner
For Respondents

:Mr.Iyappan
:Mr.N.Dilipkumar

O R D E R

[Order of the Court was made by **M.DURAI SWAMY., J.**]

The Petitioner has challenged the order passed by the Debts Recovery Appellate Tribunal, dated 15.09.2021 in I.A.No.36 of 2020 in AIR(SA)No.396 of 2019.



2.Challenging the sale notice issued by the respondent/Bank, the Petitioner preferred a SARFAESI appeal in S.A.No.565 of 2019, on the file of the Debts Recovery Tribunal, Coimbatore along with a petition for interim stay. The Debts Recovery Tribunal, Coimbatore declined to grant interim stay in I.A.No.2952 of 2019. Challenging the order, dated 20.11.2019 passed by the Debts Recovery Tribunal, Coimbatore in the stay petition, the Petitioner has preferred an appeal before the Debts Recovery Appellate Tribunal in AIR(SA) No.396 of 2019 along with an application in I.A.No.36 of 2020, for waiver of pre-deposit amount.

3.The Debts Recovery Appellate Tribunal by order, dated 15.09.2021, directed the Petitioner to pay a sum of Rs.20 Lakhs in two installments of Rs.10 Lakhs each. Challenging this order, the present Writ Petition has been filed by the Petitioner.

4.The learned counsel appearing for the Petitioner submitted that the Division Bench of this Court in the judgment in the case of **Sree Jeya Soundharam Textile Mills Private Limited and others . vs. Canara Bank, represented by its Manager, Tirupur and others reported in 2019 3 CTC 497**, held that the appellant who has filed an appeal before the Debts Recovery Appellate Tribunal as against the interlocutory order passed by the Debts Recovery Tribunal, is not liable to make the pre-deposit if the liability is not determined by the Debts Recovery Tribunal in the interlocutory order.

5.Relying upon the said judgment, the learned counsel submitted that the order passed by the Debts Recovery Appellate Tribunal is to be set aside.

6.Mr.N.Dilip Kumar, learned counsel appearing for the respondent/Bank submitted that after the disposal of the stay petition in I.A.No.2952 of 2019 in S.A.No.565 of 2019 by the Debts Recovery Tribunal, Coimbatore, the respondent/Bank had conducted the auction and the property was sold in public auction on 20.11.2019 and the sale was also confirmed on 4.3.2020 and the Sale Certificate was registered on 20.10.2021. The learned counsel appearing for the respondent Bank has also given a copy of the communication received from the respondent Bank to the learned counsel for the Petitioner.

7.In view of the submissions made by the learned counsel appearing on either side, following the ratio laid down by the Division Bench of this Court in the judgment reported in **2019 3 CTC 497** cited supra, the order passed by the DRAT is liable to be set aside and accordingly the same is set aside. The Petitioner is entitled to get refund of a sum of Rs.10 Lakhs deposited by him to the credit of Registrar, Debts Recovery Appellate Tribunal, Chennai. Since the SARFAESI Appeal is pending before the Debts Recovery



Tribunal, Coimbatore, it is open to the Petitioner to prosecute the SARFAESI Appeal before the Debts Recovery Tribunal, Coimbatore in accordance with law.

8. With these observations, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

vsn

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.
2. The Presiding Officer,
Debts Recovery Tribunal,
Coimbatore.
3. The Authorized Officer,
Canara Bank,
Karur SME Branch,
37, Ist Cross,
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+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-33708[F] dated 08/11/2021)

W.P (MD) NO.19923 OF 2021 and
W.M.P (MD) No.16618 of 2021
02.11.2021

PS (CO)

KB(19.11.2021) 3P 5C